

City and County of San Francisco

Office of the Controller – City Services Auditor

HUMAN RIGHTS COMMISSION:

Local Business Enterprise (LBE) Compliance Audit

GOVERNMENT
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July 28, 2010

CONTROLLER'S OFFICE CITY SERVICES AUDITOR

The City Services Auditor was created within the Controller's Office through an amendment to the City Charter that was approved by voters in November 2003. Under Appendix F to the City Charter, the City Services Auditor has broad authority for:

- Reporting on the level and effectiveness of San Francisco's public services and benchmarking the city to other public agencies and jurisdictions.
- Conducting financial and performance audits of city departments, contractors, and functions to assess efficiency and effectiveness of processes and services.
- Operating a whistleblower hotline and website and investigating reports of waste, fraud, and abuse of city resources.
- Ensuring the financial integrity and improving the overall performance and efficiency of city government.

The audits unit conducts financial audits, attestation engagements, and performance audits. Financial audits address the financial integrity of both city departments and contractors and provide reasonable assurance about whether financial statements are presented fairly in all material aspects in conformity with generally accepted accounting principles. Attestation engagements examine, review, or perform procedures on a broad range of subjects such as internal controls; compliance with requirements of specified laws, regulations, rules, contracts, or grants; and the reliability of performance measures. Performance audits focus primarily on assessment of city services and processes, providing recommendations to improve department operations.

We conduct our audits in accordance with the Government Auditing Standards published by the U.S. Government Accountability Office (GAO). These standards require:

- Independence of audit staff and the audit organization.
- Objectivity of the auditors performing the work.
- Competent staff, including continuing professional education.
- Quality control procedures to provide reasonable assurance of compliance with the auditing standards.

Audit Team: Elisa Sullivan, Audit Manager
Vivian Chu, Associate Auditor



CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER

Ben Rosenfield
Controller

Monique Zmuda
Deputy Controller

July 28, 2010

Chairperson and Members
Human Rights Commission
25 Van Ness, Room 800
San Francisco, CA 94102

Theresa Sparks, Executive Director
Human Rights Commission
25 Van Ness, Room 800
San Francisco, CA 94102

Chairperson and Members, and Ms. Sparks:

The Controller's Office, City Services Auditor, presents its audit report of contractor compliance with the San Francisco Administrative Code, Chapter 14B—*Local Business Enterprise and Non-Discrimination in Contracting Ordinance*. This audit was conducted to meet the ordinance's requirement that the Human Rights Commission (HRC) Director, in cooperation with the Controller, randomly audit at least three prime contractors and ten percent of joint ventures granted bid discounts in each fiscal year to ensure their compliance with the provisions of this ordinance. The audit objectives were to determine whether:

- Contractors were LBE certified, if they received a ten percent bid discount.
- Contractors disclosed all subcontractors, work was performed by all parties as detailed in HRC forms, and LBE goals were met.
- Contractors submitted all required HRC forms.
- Contractors were adequately monitored.

The audit team concluded that contractors were LBE certified, and all but one contractor appeared to have met their LBE goals. The auditors cannot state for certain whether the contractors met their LBE goals because all required documentation was not provided. The report discloses that five of the six selected contractors did not fully comply with some of the provisions of Chapter 14B, and that contract awarding departments and HRC staff should monitor their LBE contracts more closely to ensure compliance with requirements in Chapter 14B. The audit report includes seven recommendations for the four departments that were the subjects of this audit: the Airport, Department of Public Works (DPW), San Francisco Public Utilities Commission (SFPUC), and the Port. The report also includes one recommendation for the HRC.

The HRC and four departments' responses to the audit are attached as Appendix A. CSA appreciates the assistance and cooperation that HRC staff and other department staff provided during the audit.

Respectfully submitted,

Tonia Lediju
Director of Audits

cc: Mayor
Board of Supervisors
Budget Analyst
Civil Grand Jury
Public Library

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INTRODUCTION

Audit Authority

The San Francisco Administrative Code, Section 14B.10, requires the Human Rights Commission's (HRC) Director, in cooperation with the Controller, to randomly audit at least three prime contractors and 10 percent of joint ventures granted bid discounts in each fiscal year to ensure their compliance with the provisions of the *Local Business Enterprise and Non-Discrimination in Local Contracting Ordinance*. In addition, the City Charter provides the Controller, City Services Auditor (CSA), with broad authority to conduct audits.

Background

The City and County of San Francisco (City) has a long history of working to end discrimination in all aspects of public contracting. In 1984, the City's Board of Supervisors enacted Ordinance No. 139-84 to combat the City's active and passive participation in discrimination against minority- and women-owned businesses, both in its contracting for goods and services and in the private market for such goods and services. However, due to a court order issued on July 24, 2004 (*Coral Construction, Inc. v. City and County of San Francisco*), the City was enjoined from enforcing key provisions of that ordinance, codified as Chapter 12D.A, *Minority/ Women/ Local Business Utilization Ordinance*. As a result, a replacement ordinance, Chapter 14B, was enacted effective September 1, 2006, that would allow the City to continue to assist small businesses and prohibit discrimination in the award and administration of city contracts.

Pursuant to Chapter 14B, the City assists small and micro local businesses to increase their ability to compete effectively for the award of city contracts. The Mayor establishes citywide goals for participation by small and micro local businesses in contracting, and the City provides the bid discounts, set asides, and subcontracting opportunities set forth in the ordinance, information, and training, and other assistance to small and micro local businesses in order to reach those goals. The HRC and its Director assists other city departments to implement the goal of increasing participation in City contracts by small and micro local businesses.

A business contracting with the City may be eligible for one of three types of certification, the purpose being to promote the utilization and participation of local businesses with respect to City contracts. Specifically, certified businesses benefit from bid discounts, sub-contracting goals and micro-set asides that are set for most City contracts. To receive these benefits, a business must be certified with the HRC prior to the submittal of a bid or proposal. Chapter 14B allows for a ten percent bid discount¹ to a firm certified as a Local Business Enterprise (LBE) by the HRC.

Contractors who are awarded City contracts are subject to the HRC's Rules and Regulations. These rules include the completion and submission of various forms to document compliance with the Rules and Regulations, such as HRC Form 7 (HRC Progress Payment Form) & Form 9 (HRC Payment Affidavit), when contractors submit their monthly billings to the contract awarding department. At the completion of each contract, the prime contractor and any LBE subcontractors are required to complete HRC Form 8 (HRC Exit Report and Affidavit). The prime contractor states the amount it paid to each LBE subcontractor, and the LBE subcontractor must attest that the information provided by the prime contractor is correct.

Further, if a contract has been modified by the contract awarding department by more than 10 percent of the original amount of the contract, the HRC should receive written notification within 10 days of each contract modification. Form 10 (HRC Contract Modification Form) is required by the prime contractor when all amendments, modifications, or supplemental change orders cumulatively increase the original amount by more than 20 percent, and then for all subsequent modifications.

Failure to submit any contract forms documenting compliance with the ordinance may result in sanctions under Chapter 14B, including but not limited to, withholding of progress and final payments.

Under the ordinance, the Director of the HRC is to report on the progress each city department has made towards the achievement of LBE goals. This is achieved through the

¹ A bid discount is a reduction in the price of the bid for comparison purposes only, so that the contractor's bid is more favorable when compared to other bids.

HRC's Citywide Diversity Tracking System (DTS). HRC's Rules and Regulations require city departments to enter into this database accurate and complete information, such as the contract award amount, modifications, and payments, for their contracts on a timely basis.

Scope and Methodology

The purpose of the audit was to determine if the six prime contractors selected for audit complied with the provisions of Chapter 14B. The six contractors were selected to cover the requirements for two fiscal years. Specifically, the audit determined whether:

- Contractors were LBE certified, if they received a ten percent bid discount.
- Prime contractors disclosed all subcontractors, work was performed by all parties as detailed in HRC forms, and LBE goals were met.
- Contractors submitted all required HRC forms.
- Contracts were adequately monitored.

The audit covered the period from September 1, 2006, through June 30, 2009. Using lists of contracts provided by HRC staff and contract awarding departments, the audit team selected six completed contracts as of June 30, 2009. The following exhibit shows information for the six selected contracts. Since none of the joint venture contracts were completed during the audit period, the auditors did not select any joint venture contracts for audit.

To conduct the audit, the audit team reviewed all required HRC forms for documentation of compliance, tested a sample of invoices submitted by the contractors for accurate and detailed supporting documentation, and interviewed the awarding departments' project managers and HRC staff, including the contract compliance officer (CCO) assigned to those contracts, to gain an understanding of the monitoring process, including internal controls over payments. In the course of performing the audit, the audit team noted any deviations from contract requirements, city rules, and accounting best practices.

This performance audit was conducted in accordance with generally accepted government auditing standards. These standards require planning and performing the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on

the audit objectives. We believe that the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives.

EXHIBIT Six Selected Contracts for LBE Compliance Audit					
Contract No.	Awarding Department	Contract Name	Prime Contractor	Total Contract Amount	LBE Goal
8557	Airport Commission	Airport Wide Electrical and Telecommunications Construction and Repairs	BASS Electric Company	\$505,215	6%
8516R	Airport Commission	Sanitary Sewer Pump Station 5A Replacement	NCCI, Inc.	\$790,205	10%
6215A	DPW*	Upper Noe Valley Recreation Center Renovation	Trico Construction	\$8,088,097	6%
WW-452	SFPUC	Oceanside Water Pollution Control Plant HVAC Improvements	Shimmick Construction Company, Inc.	\$16,159,230	9%
WW-421	SFPUC	Euclid, Pacific, and 36 th Avenues Sewer Replacement	Harty Pipelines, Inc.	\$1,123,224	17%
2713	Port Commission	Pier 52/54 Boat Launch	Dutra Construction Co., Inc.	\$2,505,679	15%

*Note: Contract 6215A was signed by the Recreation and Park Department, but managed by DPW.

Source: Contract agreements for the six selected contracts.

AUDIT RESULTS

Contractors Were Appropriately LBE Certified, and Most Contractors Appeared to Have Met Their LBE Goals

The audit found that all of the selected contractors were LBE certified if they received a ten percent bid discount. If prime contractors were not LBE certified, they appropriately subcontracted some of the work to LBE certified subcontractors to meet the LBE participation goals.

The audit further found that all selected contractors appeared to have met their LBE goals, except for one contractor. Although the Port Commission's contractor, Dutra Construction, Inc., (Dutra) did not meet the initial participation goal set for the contract at 15 percent, the HRC awarded Dutra the contract because it was the lowest responsive bidder and demonstrated good faith efforts in attempting to achieve the LBE goal. According to an HRC contract compliance officer, due to specific expertise required for this project, there were no LBE certified contractors who could meet this goal. By the end of the contract, Dutra was only able to achieve a 0.2 percent LBE goal.

The remaining selected contractors appeared to have met their LBE goals based on the information provided on the HRC Exit Report and Affidavit (Form 8) submitted by the prime contractors. However, as detailed in the findings below, the auditors were not provided with all of the required Progress Payment Forms, Payment Affidavit Forms, subcontractor invoices, and site visit documentation and therefore, the auditors cannot state for certain whether the contractors met their LBE goals.

Five of the Six Selected Contractors Did Not Fully Comply with Certain Provisions of Chapter 14B

Almost all of the contractors selected for audit did not fully comply with certain provisions of Chapter 14B, and neither the contract awarding departments, nor HRC staff assigned to the contracts, followed up with the contractors to ensure compliance. Of the six selected contracts:

- The Airport did not collect any of the required HRC Progress Payment Forms (Form 7) or Payment Affidavit Forms (Form 9) from one of its contractors, BASS Electric.
- The Public Utilities Commission (PUC) did not require

one of its contractors, Harty Pipelines, to submit a Contract Modification Form (Form 10) for a contract modification over 20 percent of the original amount of the contract.

- The Port Commission (Port) did not ensure that one of its contractors, Dutra Construction, submitted all the required Payment Affidavit Forms (Form 9).
- Three contractors did not submit required subcontractors' invoices with their payment requests.

The HRC contract compliance officer for the Airport did not conduct site visits for the two contracts reviewed, and the Port did not ensure that the Citywide Diversity Tracking System, which is used to track LBE compliance requirements, was updated with its contract's latest data. Increased monitoring and coordination of these contracts by the contract awarding departments and their HRC staff might have identified these issues when they occurred. Finally, the HRC's procedures should be updated to include requirements of Chapter 14B, and should include more detailed procedures to guide HRC staff on their monitoring processes.

The Airport Did Not Collect Progress Payment and Payment Affidavit Forms From its Contractor

The Airport did not ensure that its contractor, BASS Electric, submitted Progress Payment forms (Form 7) and Payment Affidavit forms (Form 9), together with their payment requests and following their receipts of payment. According to Chapter 14B.11(C) and HRC's Rules and Regulations, each prime contractor's payment request submitted to the contract awarding authority is to be accompanied by the HRC Progress Payment Form to document compliance with the ordinance. Failure to submit this form may ultimately result in withholding of 20 percent of the requested payment. Further, within 10 days following receipt of a progress payment, the prime contractor is to submit to the contract awarding authority the HRC Payment Affidavit form to document compliance with the ordinance. Failure to submit this form results in notification to the HRC Director, who takes appropriate action as authorized under Chapter 14B.17, for example, by applying sanctions such as withholding funds and assessing penalties. The two forms are to be submitted to the contract awarding department, with a copy to the HRC contract compliance officer.

According to the Airport's project manager, the two forms were directed to Airport staff at the Small Business Affairs office, and he thought that the forms had been sent to that office. He was not aware that BASS did not send any of these forms to the Airport. Nonetheless, the project manager approved invoices for payment without the required Progress Payment and Payment Affidavit forms and no amounts were withheld from payment.

Further, without the Progress Payment form, the project manager is not kept up to date on the progress of the project, and the HRC contract compliance officer may not know if the prime contractors are meeting their LBE subcontracting goals, since the Form requires listing of all subcontractors, their requested payments, and copies of their invoices. In addition, without the Payment Affidavit form, noncompliance with participation goals may not be detected timely, since this Form requires listing of all prime contractors' payments to its subcontractors.

According to HRC's construction contracts procedure manual, HRC staff should regularly review the Progress Payment form, along with all relevant invoices, to determine that the subcontracting goals and level of joint venture participation are being met, and review the Payment Affidavit form and contact the prime contractor if subcontractor payments are late. According to the HRC contract compliance officer at the Airport, he replaced another HRC contract compliance officer and was not made aware that this contract was in process. Therefore he had no knowledge that the two forms were not being submitted.

Recommendation

1. The Airport's project manager and HRC staff should adequately monitor their LBE contracts to ensure that contractors submit Progress Payment forms (Form 7) with each payment request. The project manager and HRC staff should also ensure that the Payment Affidavit form (Form 9) is submitted within 10 working days following receipt of each progress payment before approving future payments.

PUC Did Not Require Its Contractor to Submit the Required HRC Contract Modification Form

The PUC did not require its contractor, Harty Pipelines, to submit an HRC Contract Modification form (Form 10) for a modified contract that increased the original contract amount by more than 20 percent. According to Chapter

14B.13(A)(12), all contract amendments, modifications, supplements or change orders that cumulatively increase by more than 20 percent the total dollar value of all contracts originally valued at \$50,000 or more, are subject to prior approval of the HRC Director. HRC's Rules and Regulations require the department to submit to the Director the modification form and other relevant documents.

According to the PUC's project manager, he did not identify that modifications to the original contract amounted to increasing the contract amount by over 20 percent. However, if the Contract Modification form is not submitted when required, other LBE participation opportunities might be lost. According to an HRC contract compliance officer, the HRC will work with the project manager to create possible LBE opportunities that may be available as a result of the increased contract amount.

Recommendation

2. The PUC should adequately monitor its LBE contracts to ensure the Contract Modification form (Form 10) is submitted when modifications result in increasing the original contract amount by more than 20 percent for any contract valued at \$50,000 or more.

The Port Commission Did Not Ensure That Its Contractor Submitted Both Required Payment Affidavit Forms

Dutra Construction (Dutra) submitted one of the two required Payment Affidavit forms (Form 9) to the Port Commission (the Port), but did not submit the second required form until requested by the auditors. According to Chapter 14B.11(C) and HRC's Rules and Regulations, within 10 days following receipt of a progress payment, the prime contractor is to submit to the contract awarding authority the Payment Affidavit form to document compliance with the ordinance. Failure to submit this form results in notification to the HRC Director, who takes appropriate action as authorized under Chapter 14B.17, which can include applying sanctions such as withholding funds and assessing penalties. According to Dutra's contract administrator, she thought that the LBE subcontractor had reported the whole amount paid to them and assumed that the Payment Affidavit form was not needed.

Recommendation

3. The Port and HRC staff should ensure that contractors submit all Payment Affidavit Forms (Form 9) within ten

working days following receipt of each progress payment from the Port.

Three of Six Contractors Did Not Submit Invoices from Subcontractors

Three out of the six contractors reviewed by the auditors did not submit all subcontractors' invoices with their Progress Payment Forms (Form 7). This occurred for the Airport's contract with NCCI, DPW's contract with Trico Construction, and the Port's contract with Dutra Construction. According to Section 2 of the Progress Payment Form, copies of all invoices from subcontractors supporting the information reported on the section should be attached to the Form. According to some departments' project managers, the departments are more concerned that the total prime contractor invoiced payments do not exceed the contract amount, and are not so concerned with subcontractor invoices. However, without invoices from the subcontractors, the awarding departments and the HRC staff will not know if the work performed by the subcontractors, which the prime contractor claimed for payment on the Progress Payment Forms, was actually performed and billed to the prime contractor.

Recommendation

4. The Airport, DPW, the Port, and HRC staff should adequately monitor their LBE contracts to ensure that copies of all invoices from subcontractors are attached to the Progress Payment Form (Form 7).

Contract Information in the Citywide Diversity Tracking System (DTS) Was Not Updated

The Port Commission did not update the *Contract Status* and *To Date Modification* fields in the Citywide Diversity Tracking System (DTS) after the contract with Dutra Construction was closed. It was only after the auditors' inquiries that the Port updated the DTS with the needed information. According to the Port staff person who is responsible for entering contract data in the DTS, the contract was closed; however, for some reason, at the time the Port encumbered the contract, the encumbrance data didn't appear in the DTS. He thought that the information should be automatically transferred to DTS from ADPICS or FAMIS.

The audit team consulted with a Department of Technology (DT) programmer who advised that DT's database is not in error. According to a DT staff, contract modifications are not automatically transferred to DTS from ADPICS. Without the

updated information about a contract, DTS users might not know the status of the contract, the final payments to the contract, and the total modification amounts.

According to the HRC's Rules and Regulations, all departments are required to accurately and completely enter the required contracting information into the Diversity Tracking system on a timely basis. Consistent failure to input accurate and complete information is treated as willful non-compliance under Section 14B.17(J). Further, HRC contract monitoring procedures state that HRC staff should review the data entered in the DTS and make sure that it is complete and correct. If there are any errors, these should be brought to the attention of the department representative who has been entering the data and HRC staff should continue to check until the errors have been corrected.

Recommendations

5. The Port should enter all required contracting information in the Citywide Diversity Tracking System (DTS), as required by HRC's Rules and Regulations.
6. The Port's HRC staff person should review the data entered in the DTS, and ensure that it is complete and correct. If there are any errors, these should be brought to the attention of the department representative who has been entering the data, and HRC staff should continue to check until the errors have been corrected.

Airport's HRC Staff Did not Conduct Any Site Visits for Two Contracts

The HRC contract compliance officer assigned to the two Airport contracts reviewed in this report did not conduct any site visits to the construction sites. HRC's construction contracts procedures manual states that HRC staff should conduct regular visits to the construction site. Without site visits, the HRC staff cannot verify that the LBE subcontractors identified on the bid forms actually performed the work.

Recommendation

7. The Airport's HRC staff should conduct regular visits to the construction sites for their LBE contracts.

HRC's Procedures Manual Has Not Been Updated

The HRC's construction contracts procedures manual, which is dated July 31, 2001, has not been updated to reflect changes brought by Chapter 14B, which was enacted effective September 1, 2006, to replace Chapter 12D. Further, the procedures manual does not provide

specific guidance on some monitoring procedures, and does not require documentation for some of its required procedures.

For example, the manual states that HRC staff should conduct regular site visits to the construction site, but does not provide guidance as to how many site visits are adequate, and does not require that the site visits be documented. Also, the auditors did not find a section in the manual to address how HRC staff should document approving contracts when bidders do not meet the LBE subcontracting goal at the time of bid.

Without an updated manual that provides detailed, specific guidance, HRC contract compliance officers cannot perform their duties in a consistent manner.

HRC staff has expressed concerns that their significant workload of LBE contracts may not allow for regular site visits to each and every project site. HRC management should consider a risk based methodology that identifies contractors with potential increased risks of noncompliance with Chapter 14B.

Recommendation

8. HRC should review and update its procedures manual to:
 - Incorporate new ordinances/rules that come into effect.
 - Address situations when there are not any bidders who meet the LBE subcontracting goal at the time of bid.
 - Explain how it should approve a contract which does not meet the required LBE goal.
 - Clarify its monitoring procedures to give a range of the appropriate number of site visits required, depending on the contract size, number of subcontractors, and risks associated with the contract, and require documentation of the site visits.

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APPENDIX A: DEPARTMENT RESPONSES - HUMAN RIGHTS COMMISSION RESPONSE

City and County of San Francisco



Gavin Newsom
Mayor

Human Rights Commission

Contract Compliance
Dispute Resolution/Fair Housing
Small and Micro Business Enterprise
Lesbian Gay Bisexual Transgender & HIV Discrimination

Theresa Sparks
Executive Director

June 28, 2010

Tonia Lediju, Director of Audits
City Hall, Room 477
1 Dr. Carlton B. Goodlett Place
San Francisco, CA. 94102

Dear Ms. Lediju:

Chapter 14B of the San Francisco Administrative Code prohibits the City or any of its officers or employees from discriminating against any person or business in the award or administration of City contracts and the Human Rights Commission ("HRC") is responsible for enforcing these provisions. HRC takes its regulatory, oversight, and contract compliance duties very seriously. Pursuant to the aforementioned Administrative Code, the HRC is required to monitor thousands of transactions each year and produce regular reports of timely information. However, several years of staffing reductions, a lack of City-wide processes, and antiquated technology systems have made it increasingly difficult for the HRC to fulfill this responsibility.

In an effort to address the needs noted above, the HRC and the Department of Technology ("DT") have recently begun collaborating on a project, DiversitySF, to establish industry best practices and technology around local business enterprise ("LBE") utilization on City-funded projects pursuant to the requirements of the Administrative Code. DiversitySF seeks to provide the City with standard procedures and a single authoritative technology system to ensure that LBE goals and rules are met when contracting for goods and services. Ultimately, DiversitySF will provide the HRC and the City with the following:

- Consolidation of disparate information systems and processes
- Technology to enable effective communication with small local businesses
- Technology to enable the efficient coordination of HRC resources
- Improved contract monitoring tools and greater contract compliance
- Improved business processes and best practices leveraged through the application.

In addition to the technology improvements that we anticipate from DiversitySF, the HRC will be updating its procedures manual in response to the multiple legislative amendments that have impacted the program over the last several years. Likewise, the



25 Van Ness Avenue
Suite 900
San Francisco
California 94102-6033



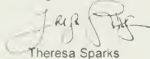
TEL (415) 252-2500
FAX (415) 431-5764
TDD (415) 252-2550
www.sfhrc.org



HRC is revisiting its policies and procedures around a number of fundamental contract compliance issues including: project site visits, LBE performance/utilization audits, and contractor invoice submission requirements.

Collectively, the HRC is confident that the actions referenced above will not only address the findings referenced in the Controller's Office audit but will put the organization on a path to fulfill all of its current and/or future regulatory, oversight, and contract compliance duties. The HRC appreciates the time and effort that the City Services Auditor staff expended conducting the audit and preparing the audit report. Please don't hesitate to contact me should you have any questions regarding the HRC response to the audit report.

Regards,

A handwritten signature in black ink, appearing to read 'Theresa Sparks', is positioned above the printed name.

Theresa Sparks

AIRPORT RESPONSE



San Francisco International Airport

July 12, 2010

P.O. Box 8097
San Francisco, CA 94128
Tel: (650) 821-5000
Fax: (650) 821-5005
www.flysfo.com

Ms. Tonia Lediju
Director of Audits
Office of the Controller
City Services Auditor Division
1 Dr. Carlton B. Goodlett Place, Room 316
San Francisco, CA 94102-4694

Dear Ms. Lediju:

We appreciate the opportunity to review and comment on the draft audit report for contractor compliance with Chapter 14B, LBE and Non-discrimination in Contracting Ordinance.

We concur with the findings and recommendations provided by your staff. Our comments are included in the "Audit Recommendation and Response Form". Also, enclosed is a copy of our payment process for staff.

If additional information is needed regarding this report, please contact Sandra Crumpler at (650) 821-5021.

Sincerely,

A handwritten signature in dark ink, appearing to read "Leo Fermin".

Leo Fermin
Deputy Airport Director
Business and Finance

Attachment (2)

cc: John L. Martin, Airport Director
Sandra Crumpler, Airport Small Business Affairs Office
Wallace Tang, Airport Accounting Manager
Elisa Sullivan, Audit Manager
Theresa Sparks, HRC Director

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(415) 554-4831
FAX (415) 554-7800
<http://www.sfdpw.com>

Department of Public Works
Deputy Director for
Financial Management and Administration
1 Dr. Carlton B. Goodlett Place, Room 340
San Francisco, CA 94102

Robert J. Carlson, Deputy Director

July 19, 2010

Elisa Sullivan
Audit Manager
City Services Auditor Division
Office of the Controller

Dear Ms. Sullivan

Attached is the DPW response to recommendation #4 from the Controller's draft audit report of the Human Rights Commission (HRC) Local Business Enterprise (LBE) Compliance Audit.

Thanks for this opportunity to reply to the draft report and please let me know if you have any questions or need additional information

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert Carlson", with a long horizontal line extending to the right.

Robert Carlson
Deputy Director DPW

"IMPROVING THE QUALITY OF LIFE IN SAN FRANCISCO" We are dedicated individuals committed to teamwork, customer service and continuous improvement in partnership with the community.

Customer Service

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PORT COMMISSION RESPONSE



July 16, 2010

Tonia Ledija, Director of Audits
City Hall, Room 477
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Local Business Enterprise Compliance Audit

Dear Ms. Ledija:

Thank you for the opportunity to review the audit report concerning contractor compliance with Chapter 14B - *Local Business Enterprise and Non-Discrimination in Contracting Ordinance*. As requested by your office, please find enclosed the Port's management response to each of the numbered recommendations that relate to our department.

The Port and HRC have worked collaboratively for many years and together we have consistently achieved good overall results in LBE participation. The current audit report highlighted low LBE participation performance on the one Port contract that was selected among the six contracts examined. For this one contract and as noted in the discussion of audit results, the Port's HRC contract compliance officer acknowledged that, due to specific expertise required for the project, there were not sufficient LBE certified contractors who could participate in the work of this particular contract. We would however like to draw attention to the Port's overall results. We recently reported to the Port Commission that, outside of exempt contracts, LBE participation for the fiscal year ended June 30, 2010 was 25.5%. In the context of the Controller's audit period for the two fiscal years ended June 30, 2009, Port staff calculated and reported annual LBE participation rates of 26.9% and 24.6% for fiscal years ended June 30, 2009 and 2008, respectively.

Sincerely,

John J. Woo
Fiscal Officer

Enclosure

Cc: Monique Moyer, Executive Director
Elaine Forbes, Director of Finance and Administration

PORT OF SAN FRANCISCO

PUBLIC UTILITIES COMMISSION RESPONSE



SAN FRANCISCO PUBLIC UTILITIES COMMISSION

OFFICE OF THE GENERAL MANAGER
155 Market St., 11th Floor, San Francisco, CA 94103
Tel. (415) 554-1600 Fax (415) 554-3424



July 9, 2010

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Chairman
ED HARRINGTON
General Manager

Tonia Ledju, Audit Director
Office of the Controller, City Services Auditor Division
City Hall, Room 476
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Subject: Management's Responses to Audit Report for Human Rights Commission:
Local Business Enterprise Compliance

Dear Ms. Ledju,

Thank you for providing your audit report for the Human Rights Commission: Local Business Enterprise Compliance. We appreciate the time and effort that you and your staff have dedicated to the completion of this audit.

Attached for your review and consideration is the completed Audit Recommendation and Response form containing Management's response to recommendation #2 for the SF PUC. We concur with your recommendation and will resolve the outstanding item.

If you have any questions or need additional information, please do not hesitate to contact me at (415) 554-1600.

Sincerely,


ED HARRINGTON
General Manager

cc Michael Carlin, Deputy General Manager
Harlan Kelly, Jr., AGM Infrastructure
Fodd L. Rydstrom, AGM Business Services and Chief Financial Officer
Nancy L. Hom, Director Assurance & Internal Controls

Recommendation	Responsible Agency	Response
<p>1. The Airport's project manager and HRC staff should adequately monitor their LBE contracts to ensure that contractors submit Progress Payment forms (Form 7) with each payment request. The project manager and HRC staff should also ensure that the Payment Affidavit form (Form 9) is submitted within 10 working days following receipt of each progress payment before approving future payments.</p>	<p>Airport and Human Rights Commission</p>	<p>Airport: Concur. The Airport staff (Small Business Affairs Office (ASBAO) and Accounting with Airport-assigned HRC staff held an informational meeting with the construction managers (CM) in February 2010 regarding the HRC contract reporting forms. As a result, we developed a process outlining the LBE contract reporting requirements and staff responsibilities for ensuring the forms will be submitted. A handout describing this process was distributed to CMs and posted on the SFO's intra-net for staff use in March 2010 to re-enforce the provisions of Chapter 14B.</p> <p>Our accounting office will not process the invoices without the required HRC forms attached to the invoices. In addition, the airport hired additional staff to monitor payments to subcontractors.</p> <p>HRC: Partially concur. The HRC and the contract awarding departments require that contractors seeking progress payments submit a HRC Form 7 followed by an HRC Form 9 within ten days following receipt of payment. While the audit report indicates that the Airport and the HRC did not collect all the necessary forms, there appears to be no evidence that the listed Local Business Enterprise ("LBE") subcontractors were not properly paid for the work performed during the contract nor is there any indication that the project's LBE subcontracting goals were not satisfied.</p> <p>The HRC, in collaboration with the Department of Technology, is working on a project ("DiversitySF") that will streamline the contractor progress payment process and provide City staff with improved contract monitoring tools which will lead to greater contract compliance. The needs assessment for DiversitySF should be complete by August 2010 and the implementation is scheduled to be completed by August 2011.</p>

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<p>2. The PUC should adequately monitor its LBE contracts to ensure the Contract Modification form (Form 10) is submitted when modifications result in increasing the original contract amount by more than 20 percent for any contract valued at \$50,000 or more.</p>	<p>Public Utilities Commission and Human Rights Commission</p>	<p>PUC: The SFPUC concurs. Management will ensure, going forward, that project Managers/Resident Engineers follow-up with the prime contractor to submit the complete HRC Contract Modification form (Form 10) to the respective HRC Contract Compliance Officer with a copy to the City Project Managers and Resident Engineers.</p> <p>HRC: Concur. The HRC and PUC have already taken, and will continue to take, steps to ensure that all the required documents are properly submitted to the HRC on a timely basis.</p>
<p>3. The Port and HRC staff should ensure that contractors submit all Payment Affidavit forms (Form 9) within ten working days following receipt of each progress payment from the Port.</p>	<p>Port Commission and Human Rights Commission</p>	<p>Port: Port staff concurs. Current procedures provide for the collection of Form 9 and we believe there is currently good compliance with this requirement. In response to this audit recommendation, staff and supervisors have been reminded to be attentive to this requirement.</p> <p>HRC: Partially concur. The HRC and the contract awarding departments require that contractors submit an HRC Form 9 within ten days following receipt of a progress payment. While the audit report indicates that the Port and the HRC did not collect all the necessary forms, there appears to be no evidence that the listed Local Business Enterprise ("LBE") subcontractors were not properly paid for the work performed during the contract nor is there any indication that the failure to collect these forms impacted the Contractor's ability to meet the project's LBE subcontracting goal.</p> <p>The HRC, in collaboration with the Department of Technology, is working on a project ("DiversitySF") that will streamline the contractor progress payment process and provide City staff with improved contract monitoring tools which will lead to greater contract compliance. The needs assessment for DiversitySF should be completed by August 2010 and the implementation is scheduled to be completed by August 2011.</p>

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<p>4. The Airport, DPW, the Port and HRC staff should adequately monitor their LBE contracts to ensure that copies of all invoices from subcontractors are attached to the Progress Payment form (Form 7).</p>	<p>Airport, Department of Public Works, Port Commission, and Human Rights Commission</p>	<p>Airport: Concur. Airport staff with HRC staff developed a payment process which has been shared with all CEMs and division heads. On going monitoring will be conducted with HRC staff to ensure that this process is enforced.</p> <p>DPW: The HRC and DPW have discussed the current HRC requirement regarding contractor/subcontractor invoice submittals with their corresponding progress payment request (i.e. HRC Form 7). In an effort to streamline the progress payment process while not compromising the contract compliance and/or departmental invoice payment process, the HRC and DPW agree that the City should move toward an approach that would only require the prime contractor to submit supporting invoices upon the request of the HRC or the contract awarding department. This approach would allow the HRC and/or the contractor's invoicing process which will: (1) ensure that LBE contractor utilization is not compromised; (2) significantly reducing the amount of paperwork that is passed between the various stakeholders. Over the next several months the HRC, DPW, and various other departments will be discussing the proposal further.</p> <p>Port: Port staff concurs. In response to this audit recommendation, staff and supervisors have been reminded to ensure that copies of all invoices from subcontractors are attached to Form 7.</p>

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		<p>HRC: Partially concur. The HRC and the contract awarding departments require that contractors seeking progress payments submit a HRC Form 7. While the audit report indicates that the Airport, DPW, Port and the HRC did not collect all the necessary supporting invoices, there appears to be no evidence that the listed Local Business Enterprise ("LBE") subcontractors were not properly paid for the work performed during the contract nor is there any indication that the project's LBE subcontracting goals were not satisfied.</p> <p>The HRC, in collaboration with the Department of Technology, is working on a project ("DiversitySF") that will streamline the contractor progress payment process and provide City staff with improved contract monitoring tools which will lead to greater contract compliance. The needs assessment for DiversitySF should be complete by August 2010 and the implementation is scheduled to be completed by August 2011.</p>
<p>5. The Port should enter all required contracting information in the Citywide Diversity Tracking System (DTS), as required by HRC's Rules and Regulations.</p>	<p>Port Commission and Human Rights Commission</p>	<p>Port: Port staff concurs. In response to this audit recommendation, staff and supervisors have been reminded to be attentive to the completeness and accuracy of the contracting information for documents in the DTS. Staff must consult further with HRC or DT staff concerning document information that is not being imported to the DTS form FAMIS. Port staff recently inquired about re-training but was advised that training is not currently available.</p> <p>HRC: Partially concur. The HRC, in collaboration with the Department of Technology, is working on a project ("DiversitySF") that will streamline the contractor progress payment process and provide City staff with improved contract monitoring tools which will lead to greater contract compliance. The needs assessment for DiversitySF should be complete by August 2010 and the implementation is scheduled to be completed by August 2011.</p>

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<p>6. The Port's HRC staff person should review the data entered in the DTS, and ensure that it is complete and correct. If there are any errors, these should be brought to the attention of the department representative who has been entering the data, and HRC staff should continue to check until the errors have been corrected.</p>	<p>Port Commission and Human Rights Commission</p>	<p>Port: Port staff concurs. Port staff will promptly address or correct any errors identified by HRC staff.</p> <p>HRC: Partially concur. The HRC, in collaboration with the Department of Technology, is working on a project ("DiversitySF") that will streamline the contractor progress payment process and provide City staff with improved contract monitoring tools which will lead to greater contract compliance. The needs assessment for DiversitySF should be complete by August 2010 and the implementation is scheduled to be completed by August 2011.</p>
<p>7. The Airport's HRC staff should conduct regular site visits to the construction sites for their LBE contracts.</p>	<p>Human Rights Commission</p>	<p>Partially concur. Within the next twelve (12) months the HRC will be updating its procedures manual in response to the multiple legislative amendments that have impacted the Program over the last several years. Likewise, the HRC will be revisiting its policies and procedures around a number of fundamental contract compliance issues including: project site visits, LBE performance/utilization audits, and contractor invoice submission requirements.</p>

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<p>8. HRC should review and update its procedures manual to:</p> <ul style="list-style-type: none"> • Incorporate new ordinances/rules that come into effect. • Address situations when there are not any bidders who meet the LBE subcontracting goal at the time of bid. • Explain how it should approve a contract which does not meet the required LBE goal. • Clarify its monitoring procedures to give a range of the appropriate number of site visits required, depending on the contract size, number of subcontractors, and risks associated with the contract, and require documentation of the site visits. 	Human Rights Commission	<p>Concur. Within the next twelve (12) months the HRC will be updating its procedures manual in response to the multiple legislative amendments that have impacted the Program over the last several years. Likewise, the HRC will be revisiting its policies and procedures around a number of fundamental contract compliance issues including: project site visits, LBE performance/utilization audits, and contractor invoice submission requirements.</p>

